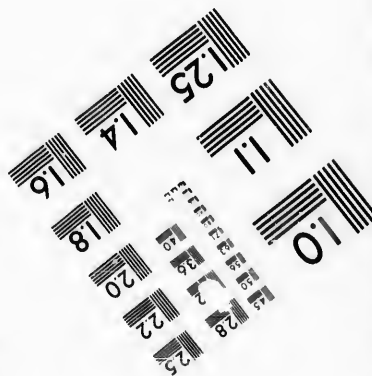
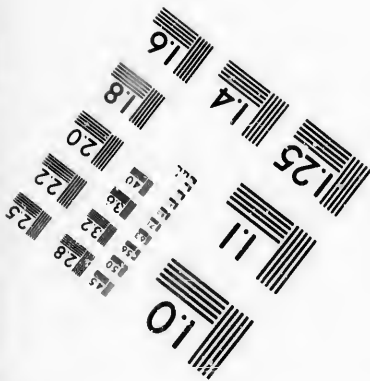
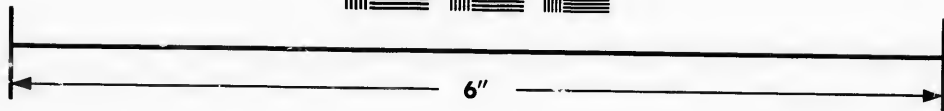
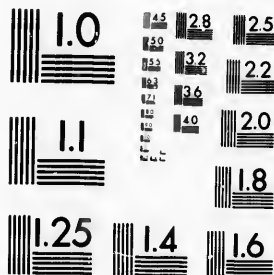
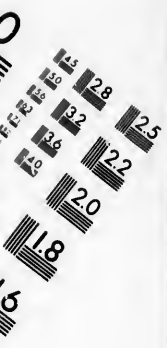


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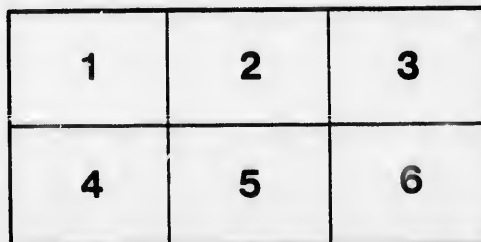
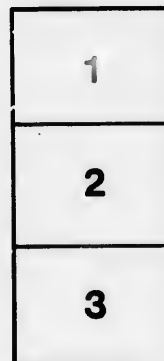
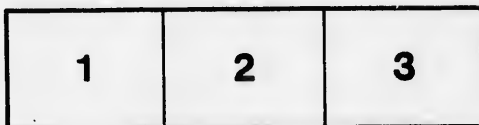
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Court of Appeals, 1820.

APPELLANTS' CASE.

EVANS, APPELLANT;  
AND  
HALFHIDE, RESPONDENT.

Filed 14 November, 1820.

*W. M.*

*1. Respondent's*

*W. M.*

*Collins*

*Peru*

*Dechamps*  
*and Johnson*

*Confirme*

C. R. OGDEN, for Appellant.

*W. M.*

*W. M. Dechamps & Johnson*

*Dechamps & Johnson*

*Respondent's case*

*1. Respondent's case*

Court of Appeals, 1830.

*Wm. B. E.*

*1830*



PROVINCE OF }  
LOWER-CANADA. }

*Court of Appeals.*

IN A CAUSE BETWEEN

THOMAS EVANS, Esqr.  
APPELLANT ;

AND

JAMES HALFHIDE, Esqr.  
RESPONDENT.

**APPELLANT'S CASE.**

THE present Appeal is brought from a judgment rendered in the King's Bench, at Montreal, dismissing an action, instituted on the 30th of May last, by the Appellant, a Lieutenant-Colonel in the Army, against the Respondent, Paymaster of the 57th Regiment of Foot, under the Law Cele to recover the possession of a certain Dwelling House and Premises, in the occupancy of the Respondent as the tenant at will of the Appellant.

The Appellant, in his declaration, sets forth—that, in 1810, he became, and from thence he hitherto continued to be, and then was, the sole proprietor of a certain lot of Land, situated in the Quebec Suburbs of the City of Montreal, containing a little more than an acre in superficies, with two Houses thereon erected.

Secondly.—That from about the 1st November, 1818, to the 24th of April last past, the Respondent held, used, occupied and possessed the said above designated premises, as the tenant of the said Appellant, paying and yielding therefor at the rate of £60, currency, per annum; but without any Notarial or regular Lease, & that effect, made and executed between the said Appellant and the said Respondent; and did then use, occupy and possess the same. That afterwards, to wit, in April last, the Appellant, being under the necessity of resuming possession of the said land and premises so leased, and intending, *bona fide*, to occupy the said premises in his own proper person, and for the use of his family, then renewed to the Respondent a notice, which he had in March previous given to him, that he, the Appellant, intended to occupy, from the 1st day of May then next, the said houses and premises, so by the Respondent occupied as the tenant at will of the Appellant; and in consequence duly notified and warned the Respondent that he was coming with his family from Kingston, and would require the delivery of the premises on the 1st of May next ensuing, and that from that period the said Appellant intended, *bona fide*, to occupy the said premises as for his personal residence, and that of his family; and thereupon, by the ministry of Griffin and Baron, Esquires, Public Notaries, exacted and demanded that the said Respondent, on the 1st of May then next ensuing, should quit, yield and deliver up the possession of the said premises in perfect repair, on pain, &c. &c. The said Appellant then further states, that so long after as the 10th May, by which he had allowed to the Respondent (his tenant at will) a full and reasonable delay to provide himself with another house, again notified him of his, the Appellant's intentions of occupying the premises by himself and his family; and of the necessity of his immediately surrendering the possession:—but to this, as to the former notices, the answer of this tenant at will, was—“*I will not quit the premises.*” It was from this persevering obstinacy, on the part of the Respondent, that the Appellant was, most reluctantly, driven to seek redress by Law. And, after stating at length the above facts, in his declaration, he concludes—that the Respondent be, by the judgment of the Court below, held to deliver up the premises immediately; and, in default of his so doing, that he, the Appellant, be authorised to pursue the course which Law and Practice in such case direct; and further, that the Respondent be condemned to pay to the Appellant the sum of £100, for his unjust and illegal detention. To this action the Respondent first pleaded certain exceptions; but, as they were afterwards withdrawn, it becomes unnecessary to refer to them.—

To the merits of the demand, he pleads certain special grounds of defence, to wit: “That at the time of the institution of the Appellant's action, and long before, the Appellant, as a Major in the 70th Regt. of Foot, was domiciliated at Kingston, in Upper-Canada, where the 70th Regt. was then quartered; and that the said Appellant, having leased to him, the Respondent, the premises in question, for, and at the rate of, £60 per annum, upon the express condition that he, the Respondent, should retain and continue to occupy the same for the space of one year, to be computed from the first of May then last, unless the 70th Regiment, quartered at Kingston, should replace the 57th Regiment, quartered at Montreal, and in as much as the said 70th Regiment had not, at time of suing out the writ, replaced the 57th Regt. at Montreal and moreover, that the said Appellant having expressly renounced to the privilege of occupying the premises in question; unless the said 70th Regiment should be quartered at Montreal, in the place and stead of the 57th Regiment; and further, because the notifications given were null and void, and insufficient, the Appellant ought not to be maintained in his action; but that the same should be dismissed. To this the Appellant filed a general Replication.



The Appellant filed, in support of his demand, three Exhibits.

1st.—Deed of Sale of the premises in question to Appellant.

2d.—A notice of the 24th April, 1820.

3d.—A protest, dated 10th May.

The Respondent, on his part, filed several letters from the Appellant, as well as copies of his own to the Appellant; and among the former, one of the 14th March, which notified the Respondent of his, the Appellant's intention of occupying the premises.

On the parties proceeded to the examination of their witnesses, which closed on the 14th October, both parties having previously been examined on interrogatories *sur faits et articles*. On the sixteenth, after the cause had been regularly inscribed, the parties were heard by their respective Counsel. And, on the 20th, the Court maintained the ground of defence taken by the Respondent, of the alleged express condition that he should hold the premises until the 70th Regiment should replace the 37th, at Montreal; dismissed the Appellant's action, with costs; and it is from this judgment, so manifestly erroneous, that the present Appeal is instituted.

*Dated at Quebec,*

*November, 1820.*

(Signed)

C. R. OGDEN,  
*Atty. for Appellant.*

well as copies of his  
which notified the

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maintained the ground  
that he should hold the  
dismissed the Appel-  
erroneous, that the

**OGDEN,**  
*Att. for Appellant.*

